Pellegrino, Rachel

From: Morris, Craig
Sent: Tuesday, January 04, 2011 5:23 PM
To: Brown, Brian (TM)
Subject: FW: Small Business Study

From: crystal h (b)(6)
Sent: Thursday, December 23, 2010 1:13 AM
To: TMFeedback
Subject: Trademark Bullying Study: Art, Freedom of Speech, and Freedom of Expression

1. Are you a trademark owner and if so what is the general size and nature of your business and the number of trademark applications or registrations your business has (Note: the USPTO will consider your comments even if you don't identify yourself in any particular matter).
Not a trademark owner. Husband and wife sole proprietorship - visual arts.

2. Whether in the last five years your business has been the target of litigation tactics attempting to enforce trademark rights beyond a reasonable interpretation of the scope of the rights granted to the trademark owner (i.e., whether you have been the subject of trademark bullying).
In the last five years we have been targeted regarding trademarks rights on at least 3 occassions and within that was a lot of trademark bullying. The most recent incident began 2 days ago. 2 incidents were from major corporations and one incident was from another artist who was under the notion that they owned the rights to a general image (a devil) and not one that was specific or in any way copyrighted.

3. A description of any situation where your small business has received a cease-and-desist letter. This can include anecdotal information concerning the outcome such as whether the letter resulted in your small business ceasing its use of one or more marks or whether the sender of the cease-and-desist letter withdrew or abandoned its demands against your small business.
The most frustrating from my experience are the big billion-dollar corporations that use copyright laws to try and protect their reputation and take away freedom of speech and freedom of expression. They will target individuals solely because the individual expresses an opinion (or so they think) that appears to be negative or is not in line with how they wish to be perceived by the general public. We have been targeted by KFC and now Jack N The Box. Although I understand they do have specific copyrighted material that may appear in certain work, I don't think that visually expressing a thought or idea that may include certain references in any way competes with their business or confuses the public into thinking that the artwork is actually food or materials from their establishment. It is making a larger statement or interpretation about a subject. For example, the KFC piece in question was relating to animal rights, vegetarianism, and consumerism. The Jack N The Box piece related to the subject of clowns in general, consumerism, world trade, the American diet (obsesity crisis), and the darker sides of Corporate America and human nature.

4. A description of any trademark litigation in state or federal court in which your small business has been involved. This can include anecdotal information concerning the outcome such as whether the lawsuit settled on the basis of your business agreeing to cease its use of one or more marks or settled on the basis of the larger business withdrawing or abandoning its trademark-related allegations, or whether the lawsuit resulted in a court judgment and the nature of such judgment.
None of these cases have been brought to litigation to date.

5. A description of situations in which your business has been involved in opposition/cancellation proceedings instituted at the USPTO. Again, provide anecdotal information concerning the outcome such as whether your business agreed to abandon its application for one or more marks or whether the proceedings settled on the basis of the larger business withdrawing or abandoning its notice of opposition or cancellation petition.
None.

6. Whether you think "trademark bullies" are currently a problem for trademark owners, and if so, how significant is the problem?
From an artist's perspective - how truly frustrating when so much around us is arguably trademarked. Not to

mention, the job of an artist is not typically a high paid position. If I decide I hate fast food and want to express that by using certain images and logos to get that point accross, and sell that painting for $500 - I guarantee you that the purchaser is not confused that the art was produced by Jack N The Box or KFC. Their decision to buy that was not influenced because of the years that corporation spent building up their marketing strategies and protecting their reputation. They buy it because they agree and appreciate the message the artwork provides. If another artist were to then decide to paint similar subject matter, to me that would be more of "copying" an idea or image then using a logo to express themselves. If I was making shoes, and painting them, and then adding the Nike Logo, and selling them under the pretense that it was art - that I could understand being a copyright issue or confusing to a consumer. I might be wrong, but I believe trademarks are to protect the Owner's reputation in limitation - not to protect them from public scrutiny - they are afterall corporations and should be allowed on the chopping block. I am forced to see their logos on a daily basis whether I want to or not. They are plastered all around us in our world.

7. Whether you think aggressive litigation tactics are more pervasive in the trademark area than in other areas of the law? **Absolutely more agressive and abused. There are companies that reportedly exist by scaring innocent individuals into sending in payment in fear of litigation or losing everything they have and it works.**

8. Whether you think the USPTO has a responsibility to discourage or prevent trademark bullying? If yes, what should the USPTO do? **I think there needs to be certain value restrictions on copyright infringement cases to ensure that their is some kind of commerical benefit at stake that is worthy of litigation first and foremost - or a sliding scale based on the corporations worth would be even better. Second, I think copyrights need to compare apples to apples. A bluegrass band in Vermont received a cease letter from a tea company because the name of their band was similar to a name of their tea. It's ridiculous. There should also be strict guidlines set forth on these third party trademark bounty hunter cyber cop ebezzling companies - they should not be allowed to operate or exist. I don't know if it's the USPTO's job but it should be some government entity.**

9. Whether you think the U.S. courts have a responsibility to do something to discourage trademark bullies? If yes, what should the U.S. courts do?

10. What other U.S. agencies may have a responsibility to do something about the problem?

11. Whether you think Congress has a responsibility to do something to discourage or prevent trademark bullying? If yes, what should Congress do?

12. Provide any other comments that you may have.

Copyright holders should be educated on what the intent of the copyright is for, their rights, and what it protects. Receiving harrassing letters from individuals who believe they have the personal right to seize all property (even property they don't feel violates the law), embezzlement letters, and letters from various law practicioners whining abot their clients reputation just shouldn't be happening. They should get their copyright revoked for this kind of behavior.